

MENT
 ELECTRONICALLY FILED

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

FILE # _____
 DATE FILED: 3-30-09

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 JOHN J. FIERO & FIERO BROTHERS,
 INC.,

:
 : 08 Civ. 1298 (VM)

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 :
 : Plaintiffs,

:
 : **ORDER**

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 :
 : - against -

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 :
 : FINANCIAL INDUSTRY REGULATORY,
 : AUTHORITY, INC.,

:
 :
 : Defendant.

-----X
VICTOR MARRERO, United States District Judge.

Plaintiffs John J. Fiero ("Fiero") and Fiero Brothers, Inc. ("Fiero Brothers") (collectively the "Fieros") brought this action against defendant Financial Industry Regulatory Authority, Inc. ("FINRA") seeking a judgment declaring that FINRA cannot recover financial penalties that FINRA imposed on the Fieros following a disciplinary proceeding. FINRA counterclaims to collect those same penalties. Now before the Court are cross-motions to dismiss the parties' respective complaints pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)").

The Court finds that FINRA has to right to collect the fees it imposed on the Fieros and that the defenses raised by the Fieros to the collection action are without merit.

The findings, reasoning, and conclusions for the Court's ruling will be set forth in a subsequent decision and order. Accordingly, it is hereby

ORDERED that the motion (Docket No. 6) of defendant Financial Industry Regulatory Authority, Inc. ("FINRA") to dismiss the declaratory judgment action by plaintiffs John J. Fiero and Fiero Brothers, Inc. ("Fieros") is GRANTED; and it is further

ORDERED that the motion (Docket No. 14) of the Fieros to dismiss the counterclaim by defendant FINRA is DENIED.

The Clerk of Court is directed to withdraw any pending motions and to close this case.

SO ORDERED:

Dated: New York, New York
30 March 2009



VICTOR MARRERO
U.S.D.J.